REMARKS

Claims 1-13, 15-29, and 31-51 were presented for examination and were pending in this application. In an Official Action dated November 17, 2004, claims 1-13, 15-29, and 31-48 were rejected. Applicants thank the Examiner for examination of the claims pending in this application and addresses the Examiner's comments below. Based on the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections, and withdraw them.

Response to Rejection Under 35 USC 103(a)

In the third paragraph of the Office Action, the Examiner rejects claims 1-13, 15-29, and 31-48 under 35 USC § 103(a) as allegedly being unpatentable over McDonald 6,211,781 ("McDonald '781") in view of Jansen 6,243,450 ("Jansen '450"). This rejection is respectfully traversed.

Claims 1, 17, 33, 36, 39, 42, 45, and 46 respectively describe a method, program storage device method, and system for the real-time tracking of goods in a supply chain, including charging users of said supply chain a fee dependent on the number of tracked goods or per transaction. These aspects of the claimed invention provide methods and systems for tracking goods in a supply chain, compensating for missing information, and charging users based on the number of goods tracked or number of transactions.

These aspects of the claimed invention are not disclosed or suggested by McDonald '781. McDonald '781 is presently understood to disclose tracking moveable articles using tag-readers, but does not disclose or suggest at least the use of a site server nor storing information at a site server. In contrast to the claimed invention, McDonald '781 does not provide storage of the tag-reader information at a location coupled to a data applicance. At

best, McDonald '781 provides storage at a remote computer accessible over a network (Fig. 6). In addition, McDonald '781 also lacks at least one additional limitation of claims 1, 17, 33, 36, 39, 42, 45, and 46 as the Examiner correctly notes. Thus, claims 1, 17, 33, 36, 39, 42, 45, and 46 are distinguishable over McDonald '781.

Jansen '450 does not remedy the shortcomings of McDonald '781. Jansen '450 is presently understood to disclose pay-per-use Internet services, but does not disclose or suggest at least charging users of a supply chain a fee to access a data center and view reports, the fee dependent on the number of goods tracked, as required by claims 1 and 45. Nor does Jansen '450 disclose charging users a fee per transaction to access and view information corresponding to a single tag read as required by claims 17 and 46. Nor does Jansen '450 disclose a system including a data center for compensation logic according to the claimed invention, as required by claims 33, 36, 39, and 42.

In addition, Jansen '450 is non-analogous prior art. A prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicants were concerned, in order to be relied upon as a basis for rejection of the claimed invention. In re Oetiker , 977 F.2d 1443, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In this case, Jansen '450 addresses the issue of network communication charges. The present invention, on the contrary, describes a method for the real-time tracking of goods in a supply chain and charging a fee for such tracking. Thus, Jansen '450 is not germane to the problem the present invention addresses. Thus, claims 1, 17, 33, 36, 39, 42, 45, and 46 are distinguishable over Jansen '450.

The deficient disclosures of these references, considered either alone or in combination, thus fail to establish even a *prima facie* basis from which a proper determination of obviousness under 35 U.S.C. § 103(a) can be made. A *prima facie* showing of obviousness requires (1) some suggestion or motivation to modify the reference, (2) a reasonable expectation of success, and (3) that the reference(s) teach or suggest all the claim limitations.

Applicant submits that the cited references do not teach or suggest all of the claim limitations as detailed above. In addition, the Examiner has not pointed to, nor can Applicant find in the references any suggestion or motivation to modify or combine the references in the manner suggested by the Examiner. It is irrelevant that it would have been obvious to try; the legal standard is that it must have been obvious to do. In addition, there must be a reasonable expectation of success. Here, it is asserted that no facts are present indicating a reasonable expectation of success. Thus, the suggested, albeit deficient, combination could only be derived from the Examiner's hindsight reconstruction of these elements using instructions found only in Applicant's own specification.

It is therefore respectfully submitted that claims 1, 17, 33, 36, 39, 42, 45, and 46 are patentably distinguishable over the cited art for at least these additional reasons.

Dependent claims 2-13, 15-16, 18-29, 31-32, 34-35, 37-38, 40-41, 43-44, and 47-48 variously depend from their respective base claims, which were shown above to be patentable over the cited references. In addition, these claims recite additional limitations that also are not disclosed by the cited references, for example wherein said compensating includes detecting that a missing tag read occurred by learning that a tag read was made on said good at a first location and at a third location, but not at a second location, wherein said

good could not arrive at said third location without first passing through said second location; further including an Intransit Data Appliance (IDA) and an Enterprise Server, said Enterprise server coupled to said data center and said IDA coupled to said Enterprise Server to transmit data on the location of a good or conveyance using Global Positioning Satellite (GPS) technology; and wherein said site server is further configured to perform aggregation-by-inference, wherein an aggregation event automatically indicates that said conveyance has been completely filled with items.

In addition, in the action dated May 19, 2004, the Examiner indicated that the subject matter of claims 15 and 31 would be allowable if rewritten in independent form.

The Examiner did not address dependent claims 49-51, which were added in the amendment filed August 19, 2004. However, claims 49-51 depend from claim 1, which was shown above to be patentable over the cited references. In addition, claims 49-51 are further limited from claim 1 by the specific recitations of "wherein said compensating comprises compensating for missing information about a good by using aggregation information derived from a previous tag read with and a current tag read to create a missing tag read for the good," "wherein said compensating comprises compensating for missing information about a second location by using location information from a previous tag read at a first location with location information from a current tag read at a third location to create a missing tag read for the good at the second location," and "receiving the missing information subsequent to the compensating; and replacing the compensated information with the missing information."

These aspects of the invention as now variously claimed are not shown or suggested by the cited art, and have not been shown to be old or well known in this art.

Thus, Applicants submit that dependent claims 2-13, 15-16, 18-29, 31-32, and 49-51 are patentably distinct over the cited art, and are now in condition for allowance.

Conclusion

In sum, Applicants respectfully submit that claims 1-13, 15-29, and 31-51, as presented herein, are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them.

In addition, Applicants respectfully invite the Examiner to contact Applicants' representative at the number provided below if the Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
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Date: February 10, 2005 By: _____

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